

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
SKETCHWORKS INDUSTRIAL STRENGTH, : Docket #1:19-cv-07470-
COMEDY, INC., : LTS-DCF
:
Plaintiff, :
- against - :
JACOBS, et al., : New York, New York
: February 21, 2020
Defendants. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE JUDGE DEBRA C. FREEMAN,
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

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INDEX

E X A M I N A T I O N S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Re- Direct</u>	<u>Re- Cross</u>
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

1 PROCEEDINGS 3

2 THE CLERK: Sketchworks Industrial Strength
3 Comedy, Inc. v. Jacobs et al.

4 Counsel, please state your name for the record.

5 MR. JORDAN GREENBERGER: Good morning, your Honor.
6 Jordan Greenberger for plaintiff, Sketchworks.

7 HONORABLE DEBRA C. FREEMAN (THE COURT): Good
8 morning.

9 MR. HOWARD SCHWARTZ: Good morning. Howard
10 Schwartz for defendant Jacobs.

11 THE COURT: Good morning.

12 MR. KENNETH KING: Good morning, your Honor.
13 Kenneth King for defendant Vanguard National Trust Company
14 as trustee under the will of Warren Casey.

15 THE COURT: I'm sorry?

16 MR. KING: As trustee under the will of Warren
17 Casey, Vanguard National Trust Company.

18 THE COURT: All right. So I have some
19 correspondence here at least from one side of the aisle.
20 So somebody just fill me in here. There's been a motion
21 to dismiss filed, and is that --

22 MR. SCHWARTZ: That's sub --

23 THE COURT: -- in -- is it fully briefed?

24 MR. SCHWARTZ: Oh, yes. It was submitted, I
25 think, the first week in December, right after

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Thanksgiving.

So if I can speak first?

There's only one side submitting information to your Honor because the defendant basically doesn't disagree with the concept that in this kind of a case it's a side-by-side analysis -- that's not the issue.

The only issue for us -- and we've had some correspondence going back and forth, and as of yesterday, there seemed to be some movement about this. But what I'm specifically talking about in terms of discovery, so in a side-by-side analysis, the Court can see the words and can see certain aspects of it. But this work is a parody in plaintiff's view, a rip-off in the defendants' view of the play "Grease." And so there's music involved. And a Court -- I have all respect for all courts -- can't tell side by side what's taken and what's not taken and how much is taken. So I've been asking plaintiff simply -- and they're not denying that they've taken it -- and I'm saying, "Just tell me how much of the music you took, because that's an element of proof in the case as to how much taking has occurred in order to create a parody."

So we think that they've taken all of the music from all of the songs. And I was asking, I said, "Just stipulate to that; you know, it's not harm, no foul."

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PROCEEDINGS

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You're going to have to tell me, anyway." And we went for months and months with that not really resolving. And then I think either yesterday or the day before the plaintiff's lawyer sent me mp3's of the music, which there's some movement. But all I'm asking for, to put it bluntly, is there are perhaps 30 to 40 versions of each of the songs that they copied. Even if they should say they copied all of the songs or they copied three out of three minutes and 15 seconds of it, I mean, that's information within their knowledge that they could easily obtain; or they should, if they don't want to do that, they should tell me which version of each song they copied so that we can then compare them to establish how much taking occurred. That's all I'm trying to find out. Does that make sense?

THE COURT: Wait. Hold on a second. Plaintiff seeks declaratory judgment that he's not infringing.

MR. GREENBERGER: Correct.

THE COURT: Defendant wants to dismiss the complaint. And you, if you're successful, you are going to assert a claim on your own of infringement, or you're --

MR. SCHWARTZ: No, no, no, no. Chances are if the case is dismissed, we're happy the case is dismissed.

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PROCEEDINGS

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The underlying factors, the agents for the defendants sent a cease-and-desist letter which was withdrawn once the principals found out. So that's the basis of the underlying case.

THE COURT: All right, so you're not going to claim that it is infringing?

MR. SCHWARTZ: It's uncertain -- if the case is dismissed on this present motion, the defendants are uncertain. Chances are they would like the whole thing to just disappear. If the case is not dismissed, we'll have to -- we'll assert counterclaims and defend vigorously.

MR. GREENBERGER: Your Honor --

THE COURT: So right there --

MR. GREENBERGER: -- that totally defeats their motion to dismiss, which is based on the argument that there's no case in controversy. Right? Their entire argument that they're entitled to discovery is contradictory to their position that they made to Judge Swain, which is we withdrew the cease-and-desist letter, and so the case is moot because there's no case in controversy. That, of course, ignores the fact that another attorney who represents the defendants, I believe a transactional attorney, said this is a blatant infringement of my client's rights and all this other stuff, and the

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2 tone of the various correspondence we've had.

3 So my first response is you can't have it both
4 ways. You can't say there's no case in controversy because
5 we're not claiming infringement, but by the way, we want
6 discovery. And even here today he won't say we're not
7 withdrawing our claims, but maybe it will go away; but if
8 it doesn't we're going to counterclaim against you. I
9 mean, I'm going to get a copy of this transcript and send
10 it to Judge Swain because it totally defeats their motion,
11 which I've asked them to withdraw.

12 On the question of discovery, I submitted to your
13 Honor various citations, the case law from the Southern
14 District of New York, including cases that have been
15 affirmed by the Second Circuit. I cited cases to the
16 Second Circuit where they say when it's a parody defense
17 based on fair use, you don't need discovery; you compare
18 the subject works and you analyze it under relevant case
19 law. That's all we're asking to do. The case I cited to
20 your Honor, the *Lombardo* case, I represented the successful
21 plaintiff in that case. Judge Hallerstein, what he said
22 was let's close the pleadings; you have your declaratory
23 judgment claim; the defendant counterclaims for
24 infringement; you answer. Boom, you make a rule 12(c)
25 motion on the pleadings. There's no need for discovery.

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PROCEEDINGS

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And that's the course that the courts in this jurisdiction have been taking in fair-use cases.

So our position is there's no need for discovery. That being said, I gave counsel a copy of the mp3's. The complaint, paragraph one, cites to a YouTube video. So he's had the songs since September if he really wanted to listen to them. Paragraph nine explicitly says that the play is based on the popular movie version of "Grease," which is the 1978, I think, film with John Travolta. So he's known for months what it's based on. But I'll say it explicitly, the authors of the play watched the 1978 movie and wrote a parody. They did not write the songs, they're not the songwriters. There's a separate musical arranger who I don't represent. I represent Sketchworks Industrial Strength Comedy, Inc., which is the owner of the copyright on the play or the parody. But I have the songs, you've had them in the YouTube video for months. You have the mp3's now, and now you know exactly the entire basis where somebody sat down and watched the movie and made fun of it. That's the entire case.

THE COURT: All right, hang on a second. I'm still trying to get my head around this.

MR. GREENBERGER: sure.

THE COURT: So defendants have said on the motion

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PROCEEDINGS

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to dismiss we're not really going after them for infringement. Because we're not really going after them for infringement, they don't have a basis to seek a declaratory judgment. We're really not doing that. They don't have a good reason to fear that. There's no reason we need the Court to make a statement on the issue. Is that right?

MR. SCHWARTZ: Correct, because -- or at least partially correct -- because we withdrew -- the only issue for the plaintiffs about defendants asserting their rights was a cease-and-desist letter, which was unauthorized, sent by mistake and withdrawn. So we --

THE COURT: So you're not really asking them to cease and desist?

MR. SCHWARTZ: No.

THE COURT: You're okay with their doing this; you're not really challenging it? You reserve the right to challenge it if the case goes forward, but if the case does not go forward, then you confirm that you will not be challenging it?

MR. SCHWARTZ: No, no, no, no. There are two slightly different parts there which --

THE COURT: All right, this is not meant to be oral argument on the motion to dismiss. I don't have that motion in front of me -- right -- and I'm not trying to

1 PROCEEDINGS 10

2 create a record for Judge Swain. I'm just trying to
3 understand, in the context of the discovery that you might
4 be seeking here and whether I should set a schedule or
5 whether I should stay discovery, what your position is,
6 whether you care about this or you don't care about this.

7 MR. SCHWARTZ: Well, we certainly care a lot about
8 it. But the posture of the case is if the motion to dismiss
9 is denied, plaintiff will go forward with the case. In that
10 event, we will assert a counterclaim both as to copyright
11 infringement and other claims which I've notified plaintiff
12 about. If the case goes forward, the only issue important
13 to the defense to determine is the amount of the music that
14 was actually taken. The plaintiff says, "Well, we know what
15 the song" -- identified the songs, and he knows what they
16 are. The songs are the songs, but the issue is how much of
17 the music was taken.

18 THE COURT: So what would you need in discovery
19 that you don't already have in that regard?

20 MR. SCHWARTZ: The versions of the songs that they
21 copied them from -- that's within -- in other words, for
22 each song, say --

23 THE COURT: I thought counsel just said it was
24 from the movie version, the one --

25 MR. SCHWARTZ: That's the first I've --

1 PROCEEDINGS 11

2 THE COURT: -- with John Travolta in it.

3 MR. SCHWARTZ: Yeah, if that's the case, then it's
4 just as easy for him to tell me did they copy all of the
5 songs --

6 THE COURT: Well, if you --

7 MR. SCHWARTZ: -- or is there one note in the song
8 that's different. That --

9 THE COURT: If you have a copy of the performance
10 of the claimed parody musical and you have the movie that it
11 was claimed to be a parody of, what more do you need?

12 MR. SCHWARTZ: If they've copied it only from that
13 movie version, because each one of those songs has different
14 versions to it. Does that make sense to your Honor?

15 THE COURT: Each version -- I'm sorry, which
16 songs, the songs in the movie or the songs in the parody?

17 MR. SCHWARTZ: No, the songs in the movie may have
18 different versions of it. Each song has different -- each
19 song that defendants own has different versions.

20 THE COURT: Okay. So I understand plaintiff to be
21 saying that it was --

22 MR. GREENBERGER: From the movie version.

23 THE COURT: -- meant to be a parody from the movie
24 version. Is that correct, counsel?

25 MR. GREENBERGER: That's correct, your Honor.

1 PROCEEDINGS 12

2 THE COURT: Okay. It says -- in paragraph nine of
3 the complaint it says -- and I will read it -- "On
4 information and belief, several variants of 'Grease' exist
5 such that there are differences between the original play,
6 the 1978 film, and versions currently licensed by
7 defendants. The following is a synopsis of the popular film
8 version, a derivative of defendants' original musical, and
9 upon which 'Vape' is based." Right? So if I'm reading
10 that right, it's the 1978 film version upon which the
11 plaintiffs play or musical is based. Am I reading that
12 right?

13 MR. GREENBERGER: That's correct, your Honor.

14 THE COURT: Okay. So it says that. He's
15 confirmed that on the record for you. Now what more do you
16 need?

17 MR. SCHWARTZ: I would request, if that's the
18 case, then they simply notify me or acknowledge to me that
19 they've taken all of those songs and used those songs --

20 THE COURT: Why can't you figure that out
21 yourself if you have the movie and you have the performance
22 of the plaintiff's production?

23 MR. SCHWARTZ: Of course we can now that that's
24 been verified.

25 THE COURT: Okay.

1 PROCEEDINGS 13

2 MR. SCHWARTZ: But it would seem that that's
3 putting the burden on me to do, and all I'm requesting is
4 that it's just as easy for them to verify -- it's easier
5 for them to verify that to me than it is for me to have
6 to --

7 THE COURT: But verifying something in writing
8 seems more imprecise than saying, "Here is exactly version
9 A, here is exactly version B, A being yours, B being ours;
10 there you are." And you can figure out how much you think
11 it's the same, they can figure out how much they think it's
12 the same, and you can argue about that later if you need
13 to.

14 MR. SCHWARTZ: Okay, then that's what we'll do.

15 THE COURT: Okay. So let me ask a separate
16 question of plaintiff on this side-to-side analysis
17 concept. Are you saying the Court should be able, without
18 discovery -- including expert discovery -- should be able
19 to put music side by side and figure it out for itself? Or
20 is music not the issue here because you --

21 MR. GREENBERGER: Music has not been the issue
22 from our perspective, but what I'm suggesting to the Court
23 is the Court can sit and watch the YouTube performance and
24 read the script of "Vape" and then sit and watch the movie
25 version of "Grease" --

1 PROCEEDINGS 14

2 THE COURT: An enjoyable time for --

3 MR. GREENBERGER: -- upon which it's based.

4 THE COURT: An enjoyable time for the Court.

5 MR. GREENBERGER: That's what I did before I took
6 the case in order to analyze it. That's how I drafted the
7 complaint. I mean, it would require two and a half hours
8 of the Court's time to sit and watch the movie and watch
9 the approximately one-hour YouTube thing. You watch it --
10 I mean, it's plainly apparent to me that it's a parody.
11 And then you read the case law. You read the *Lombardo*
12 case, you read the *Adjmi* case. I mean, there are so many
13 parody cases that I could site; there's cases involving
14 music from Mad Magazine in the 1950s or '60s; there's a
15 Saturday Night Live case --

16 THE COURT: All right, so the cases that involve
17 music did not involve any experts or special discovery on
18 it?

19 MR. GREENBERGER: To my recollection, they don't
20 because it's whether a reasonably -- a parody can be
21 reasonably perceived. In fact, the case that I cited in my
22 supplemental letter to the Court the other day, that was
23 exact copying. That was political speech; it was fair use,
24 but it was literally exact copying of the plaintiff's
25 video, just 20% of the original video. There was no

1 PROCEEDINGS 15

2 commentary other than the title of the new work. And the
3 Court, Judge Sullivan, said this is literally the exact
4 same video, but I'm calling it fair use because the context
5 in which it appears, one person is an uber-right
6 commentator on YouTube, the other person's an uber-left
7 person, and all people need to know is that context. And
8 so that's our position is that when you watch it in context
9 and you hear the music, it's clear that you're allowed
10 to -- for purposes of parody the Supreme Court has said
11 you're allowed to conjure up the original. That's the
12 whole point is to make fun of it and jab at it. So I don't
13 think it's really an issue.

14 THE COURT: Okay. So it seems to me that the
15 parties are basically in agreement that discovery's not
16 needed here. The one exception that defendant has
17 described to me doesn't seem like there's much to it, given
18 what has already been provided voluntarily. So I will stay
19 discovery. I'd like to ask you to please just let us know
20 in my chambers when the motion to dismiss is decided
21 because we should get a notice electronically; but just in
22 case we miss it, I don't want to lose track of your case.
23 If that motion is denied and the case goes forward, then I
24 just want to be aware so that I can track what's going on.
25 I don't think I would lift the stay at that point because

1 PROCEEDINGS 16

2 at that point I think you would get the pleadings all in,
3 and you'd end up with a motion for judgment on the
4 pleadings.

5 Is there any possibility of just settling this
6 without all -- without Judge Swain having to decide this
7 motion, without the parties have to, if the motion, you
8 know, is denied, the parties going to another round of
9 motion practice? It seems to me that if defendants are
10 saying that if the motion is dismissed, they would live
11 with that -- that seems to be what you're saying -- only if
12 the motion is denied would they start fighting tooth and
13 nail. It seems to me you ought to be able to live with
14 some amicable resolution of this without a lot of fighting.

15 MR. SCHWARTZ: I'm not saying that -- in
16 answer -- to respond only to the first part of your Honor's
17 comments -- I'm not committing that the defendants would
18 live with it. I'm saying they withdrew the offensive
19 cease-and-desist. There were substantial settlement
20 proposals from the entity that sent the cease-and-desist
21 letter. There was a counterproposal by plaintiff that was
22 so extraordinarily off the wall, to use a colloquialism,
23 that that's where we are now. The --

24 THE COURT: Well, let me --

25 MR. SCHWARTZ: -- settlement proposal initially

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made was --

THE COURT: Wait. Hold on a second.

MR. SCHWARTZ: Sure.

THE COURT: Let me just back up a second before we talk about settlement. I said I would stay discovery. Is that really the right way to go about it, or should I just say there will be no discovery, there is no need for discovery, period, and let Judge Swain know that I don't think there's a need for discovery in this case, that this should be resolved without discovery? Because a stay, the concept is at some point it gets lifted. And what might change along the way that might cause me to rethink this and think discovery really is needed; is there anything?

MR. GREENBERGER: Not that I can think of, your Honor, and I think that's a good clarification, that "stay" implies that there might be discovery in the future, and --

THE COURT: Stay is generally you're holding off until something happens.

MR. GREENBERGER: Right. And I don't think there is any need for discovery under any circumstances.

THE COURT: As I was thinking about it, I thought, all right, what could happen. What could happen is the motion is denied, the case goes forward to the next stage. There would still not be a need for discovery

1 PROCEEDINGS 18

2 because you'd be in the land of judgment on the pleadings.
3 Only if motion for judgment on the pleadings is then
4 denied --

5 MR. GREENBERGER: I suppose -- well, that motion
6 I think would be made to Judge Swain as a dispositive
7 motion.

8 THE COURT: Right.

9 MR. GREENBERGER: And if she were to deny it and
10 say, you know, there's questions of fact that I -- or
11 questions that I have, then I suppose in that
12 circumstance --

13 THE COURT: Maybe what I do is I say there'll be
14 no discovery, and if circumstances change along the way
15 somehow where someone is able to identify the need for some
16 discovery, you will come back to me and let me know what
17 that is and why and what the context is.

18 MR. SCHWARTZ: That's reasonable. I was going to
19 add, only again because I'm very nervous about the music,
20 and then plaintiff's lawyer said that it wasn't his music,
21 there was really a separate musical arrangement, I'm
22 nervous about -- nervous on behalf of defendants -- about
23 the music. And the only reason why the -- one of the
24 reasons why the music is important is because, as my
25 adversary said, the case law says you can only -- you

1 PROCEEDINGS 19

2 should only take as much of the original as you need to
3 conjure up and then to make a parody. So we think, we on
4 the defense side, that they took everything from the
5 plaintiff, including the music. So the music is an
6 important part if they've taken everything.

7 THE COURT: So quick question. If the case were
8 to go forward and you were to counterclaim, would you also
9 seek to bring in other defendants on a counterclaim who
10 were involved with the music?

11 MR. SCHWARTZ: Yes. I think -- and I'm not sure
12 because I don't have discovery -- so this was the first
13 I've heard that the music was created by an outside party
14 and not necessarily them -- and I've notified the plaintiff
15 that -- and it's in the record, it's on the videos -- that
16 they've used the names of Jacobs and Casey, the two authors
17 of the play. And that's a violation of the Civil Rights
18 Law in New York. You can't use somebody's name without
19 written permission, and that's regardless or separate and
20 aside from a fair use. So I've told them that if there
21 is -- if the case goes forward, when we would counterclaim
22 against them for use of the names. And I'm not sure
23 who -- I'm not sure which individuals we would then seek
24 to bring in for use of those names. So --

25 THE COURT: So when you withdrew the

1 PROCEEDINGS 20

2 cease-and-desist letter, you didn't think about sending a
3 new letter that said, "Look, for now we're just asking you
4 to remove the use of these names"?

5 MR. SCHWARTZ: Based off the lawsuit on a Friday,
6 the decision -- so all this occurred, I think, within a
7 week, essentially; the cease-and-desist went out, and then
8 within a week or a very short period of time the principal
9 who my adversary mentioned, the principal transactional guy
10 was away for the birth of his granddaughter, and so when he
11 came back, he saw that the letter was sent out, so that he
12 consulted with Concord, the third party here, and they --
13 and it was determined that they would withdraw the cease-
14 and-desist. On Friday the plaintiff filed the lawsuit, and
15 the cease-and-desist went out on Monday. So hyper-
16 technically, the cease-and-desist was after the filing of
17 the initial complaint. To add another nuance to it,
18 thereafter, they amended the complaint, which supersedes
19 the first complaint, so that as of the date of the
20 operative pleading, the amended complaint, there was no
21 cease-and-desist; it didn't have to even be withdrawn
22 because it had already been withdrawn.

23 So there are two parts to the plaintiff -- to the
24 defendants' --

25 THE COURT: Okay, here's what I'm going to do

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PROCEEDINGS

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with respect to discovery. I'm going to say no discovery with leave to reopen or open discovery if the motion to dismiss is denied and if a counterclaim is filed and if the counterclaim in some way gives rise to the need for discovery. And I can hear from you on that subject when -- if there is a counterclaim. Because I don't know what its shape will be, I don't know who might be brought in as defendants, I don't know what issues might be raised on that. It's not part of the case currently. All right?

MR. GREENBERGER: Your Honor, I'd just say that if they do counterclaim, I intend to make a motion to dismiss those counterclaims. So it wouldn't be until that motion is --

THE COURT: Well, that's fine, but you don't know what the counterclaim would have in it, either, because you don't have it yet. So you don't know who's going to be named, you don't know if you're going to represent --

MR. GREENBERGER: That's true.

THE COURT: -- the people who are named.

MR. GREENBERGER: Correct.

THE COURT: There's a lot of unknown there. And if new parties are named and new claims under new statutes are raised under state law or something like that, who knows whether there could be facts that could be relevant

1 PROCEEDINGS 22

2 and where discovery could be appropriate. So no discovery
3 but leave to come back and seek discovery on a counterclaim
4 if there is one in the case, one or more in the case.

5 Okay, now, with respect to settlement, what I'm
6 going to do is go off the record so we can talk about
7 settlement off the record. All right? We're off.

8 (Off/on the record)

9 THE COURT: All right, we're going back on the
10 record so that Mr. King --

11 MR. KING: Correct.

12 THE COURT: -- can raise some other issue.

13 MR. KING: For Vanguard National Trust.

14 I just wanted to flag one issue for your Honor.
15 I don't believe it's controversial. But the Casey Trust
16 beneficiaries have appointed special trustees who control
17 the Casey interest in the Grease copyright. Vanguard does
18 not, and we've communicated that to plaintiff's counsel.

19 The parties have agreed that, if the motion to
20 dismiss is denied, the pleadings will be amended to add the
21 special trustees. That's for another day. And we'll
22 further -- again, if the motion to dismiss is denied, we'll
23 have further discussions with the plaintiff's counsel as to
24 whether Vanguard should even be in the case at that point.
25 But I wanted to flag the issue about the amendment.

1 PROCEEDINGS 23

2 THE COURT: You ought to be able to work that out
3 by stipulation if you just want to make sure you've got the
4 right parties.

5 MR. KING: And we have stipulated to add the
6 special trustees. Whether Vanguard remains part of the
7 case, that will await --

8 THE COURT: I'm sure --

9 MR. KING: -- and whether we can get -- stipulate
10 in that regard, we'll await further discussions with the
11 plaintiff.

12 THE COURT: I'm sure both sides have an interest
13 in just getting the right parties named and the wrong
14 parties not named. So --

15 MR. KING: Correct.

16 MR. GREENBERGER: Your Honor, that's correct.
17 And what's been communicated to me is not that Vanguard is
18 an improper party; it's just that there are these special
19 trustees and with one of Mr. King's colleagues I briefly
20 spoke about it, and we emailed, and I said you just sending
21 me an email with a few sentences doesn't establish this to
22 me. If you want to show me some documents or, you know,
23 basically put together a motion so I could see what you're
24 saying, like, I don't know if they're necessary parties or
25 unnecessary parties or anything. And so I just said I'm

1 PROCEEDINGS 24

2 fine; I just want the party in interest, the people who own
3 the copyrights in "Grease."

4 THE COURT: So with respect to discovery, you
5 just said, "If you want to show me some documents." You
6 need discovery as to who the right parties are?

7 MR. GREENBERGER: No. What was represented to me
8 was that Vanguard is a proper party, but there are special
9 trustees or sub-trustees who really make the decisions with
10 respect to "Grease" --

11 THE COURT: So you don't want to -- now this has
12 been flagged -- you don't want to serve an interrogatory or
13 something or ask for some documents to pin this down to
14 make sure you have the right parties?

15 MR. GREENBERGER: They're not disputing that I
16 have the right party, and I don't think Mr. King is
17 disputing that Vanguard is a proper party here. And
18 Vanguard is the trustee, as I understand it, and there are
19 just other people who work with them with respect to -- but
20 it's not that Vanguard isn't the copyright owner or the
21 owner of the interest in the copyright. And he can clarify
22 that --

23 THE COURT: I'm sorry, Mr. King, I thought you
24 were suggesting that he's got the wrong party named?

25 MR. KING: Well, Vanguard is the trustee, but the

1 PROCEEDINGS 25

2 special trustees control the copyright.

3 THE COURT: So why would you say Vanguard should
4 be dropped?

5 MR. KING: Because the special trustee --
6 Vanguard doesn't have control over the Casey interest in
7 the "Grease" copyright. I think we can --

8 THE COURT: Does it potentially have liability on
9 a declaratory judgment action? Would it have to be --
10 would it have to be named in a declaration by the Court?

11 MR. KING: I don't know the answer to that. And
12 my point is, is that if the motion to dismiss is denied, we
13 conceivably or could possibly work it out with the
14 plaintiff's counsel to drop Vanguard. But that's something
15 for another day if the motion to dismiss is denied.

16 THE COURT: Okay, look, if the motion to dismiss
17 is denied and anybody needs or wants discovery regarding
18 not fair use but who the right parties are, talk to each
19 other informally first; see if you can satisfy your needs
20 through informal discovery voluntarily. If you can't, you
21 come back to me, and it's another reason to open discovery
22 if you, you know, can't get to the bottom of that. If you
23 need a deposition of somebody to explain who the right
24 party is, you'll tell me that, and the door will open again
25 for that. All right?

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PROCEEDINGS

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Now can we talk about settlement?

MR. GREENBERGER: Sure.

THE COURT: Anything else before we go off the
record again?

All right, off the record for settlement talk.

(Whereupon, the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Sketchworks Industrial Strength Comedy, Inc. v. Jacobs et al, Docket #19-cv-07470-LTS-DCF, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: February 28, 2020